

INTOXICATING LIQUOR: (1) Corporation or individual owner, as licensee of several retail stores or outlets licensed to sell intoxicants at retail, may purchase intoxicants, place the intoxicants in central warehouse or on licensed premise, and then distribute the intoxicants as needed to the various licensed stores or retail outlets belonging to this same corporation or individual owner. (2) The transfer of intoxicants from store to store, and between stores or outlets, all belonging to the same corporation or individual owner, as licensee, is not done in violation of the Liquor Control Act of Missouri, particularly Section 4913, R.S. Mo. 1939.

April 12, 1948

Mr. Edmund Burke, Supervisor  
Department of Liquor Control  
State of Missouri  
Jefferson City, Missouri



Dear Sir:

Your opinion request of recent date reads as follows:

"Please let me have your official opinion on the following questions:

"(1) Is it lawful, under the Liquor Control Law of the State of Missouri, for a person or corporation, possessing a number of retail liquor licenses from the State of Missouri to sell intoxicating liquor at various places in the State of Missouri, to purchase large quantities of liquor, have it delivered to a central warehouse or to one of the licensee's licensed premises and then distribute this liquor as needed to the various licensed stores belonging to this same owner to be sold at retail?

"(2) Is it lawful, under the Liquor Control Law of the State of Missouri, for a person or corporation, possessing several licenses to sell intoxicating liquor at retail from the State of Missouri at several different premises in the State of Missouri, to transfer liquor delivered to one of these premises to another store belonging to the same owner to be sold in such other store?"

Since your request proposes two questions, we will consider each question in order.

## I.

As we understand your first question, a corporation or individual owns several stores or outlets for the sale of intoxicating liquors at retail, each being properly designated as a place for the retail sale of intoxicants pursuant to Sections 4895, 4898, 4901, R.S. Mo. 1939. The corporation or individual, as licensee, purchases intoxicants, from properly licensed wholesalers, in an amount or quantity sufficient to supply all the retail stores or outlets belonging to the same corporation or individual owner. Having done so, the intoxicants are stored in a central warehouse or on a retail premise described in a license, and then distributed to the retail stores or outlets belonging to the corporation or individual owner as needed. It must be borne in mind that all of these stores or outlets are owned by the same corporation or individual owner. It is true that all are designated as a place of business separately, as required by Section 4897, R.S. Mo. 1939, as a place for the sale of intoxicants at retail. The requirement that each separate place of business must be designated in the license is intended to harmonize with the intent of Section 4881, R.S. Mo. 1939, which requires that all sales of intoxicants take place on the premises designated in the license. It was the obvious intention of the Legislature to confine sales of intoxicants to certain definite areas, as is seen by considering Section 4881, supra. If sales must be confined to premises designated in the license, it is obvious that a separate license designation would be required for each place of sale, even though no such statutory requirement had been expressed by the Legislature. However, the Legislature has made such requirement, and for the purpose of designating the area where sales of intoxicants may be made, a separate license designation is required, Sections 4897, 4881, R.S. Mo. 1939. This requirement does not in any way affect the amount or quantity of intoxicants that may be purchased from the wholesale licensee. And, further, each separate license is issued to the corporation or to the individual owner. Now it is asked whether or not, under these circumstances, the method of operation outlined by your request is lawful under the Liquor Control Act of Missouri.

A prior opinion of this office rendered November 19, 1938, to the Hon. W. I. Bowers, Chief Clerk, Department of Liquor Control, analyzed an identical situation in which "chain" drug companies dealt with intoxicants. In that opinion the facts were that one of the "chain" drug company's retail outlets or stores which held a license as a retail liquor dealer, purchased in-

toxicants from licensed wholesalers in large quantities and then stored same in a warehouse. These intoxicants were then distributed to the other retail outlets or stores from the warehouse as needed. The arguments advanced in that opinion, condemning such a method of operation, a method identical to the method of operation outlined in your opinion request, were threefold: (1) It was argued that each licensed place of business was a separate and distinct place of business, even though "merely a branch place of business of one corporation." This conclusion was arrived at by applying section 4897, R.S. Mo. 1939. (2) It was argued that, being a separate and distinct place of business, the one retail licensee "that is supplying each of the other retail dealers (within the "chain" or corporate organization) and outlets of these corporations \* \* \* \* is exceeding its authority granted under its permit." For the reason that by the definition of the authority of a retail license (citing C. J., Vol. 54, page 737), this supplying retail licensee was acting "in the nature of a wholesaler" without authority. (3) Further, it was argued that any of the retail outlets or stores that received the intoxicants they sold or offered for sale "from one of the other retail branches of said corporation" violated the statute proscribing the purchasing of intoxicants by one retail licensee from another retail licensee for the purpose of resale, Section 4913, R.S. Mo. 1939.

The above numbered arguments are the only legal arguments that have been brought forward. We must determine the correctness of said arguments.

We have been unable to find any specific provision of the Liquor Control Act of Missouri which deals directly with the method of operation as outlined. We deem it advisable to set out the statutes, among others, relied on in the prior opinion and referred to above. Section 4913, R.S. Mo., 1939, provides as follows:

"It shall be unlawful for any person in this state holding a retail liquor license to purchase any intoxicating liquor except from, by or through a duly licensed wholesale liquor dealer in this state. It shall be unlawful for such retail liquor dealer to sell or offer for sale any intoxicating liquor purchased in violation of the provisions of this section. Any person violating any provision of this section shall be deemed guilty of a misdemeanor."

This Section presupposes a sale between two retail licensees. To argue that the use of the term "purchase" precludes a sale is to argue the absurd. The retail licensee that purchases or is the buyer is a party to a sale regardless of whatever misnomer or error of terminology the legislature may have used in describing this transaction. Also, under this section it is illegal for the retail licensee who purchased or was sold to by another retail licensee to sell or offer for sale intoxicants which had been the subject matter or property involved in the initial illegal sale provided against by the first portion of Section 4913, supra. In either event, a sale must occur in order for said statute to be violated. Section 4898, Laws of Mo., 1945, provides in part:

"No person, partnership, association of persons or corporation shall \* \* \* \*  
sell, or offer for sale intoxicating liquor within this state at wholesale or retail, \* \* \* \* without procuring a license from the supervisor of liquor control authorizing them so to do. \* \*  
\* \*" (Underscoring ours.)

Section 4895, R.S. Mo., 1939, provides:

"It shall be unlawful for any person, firm, partnership or corporation to manufacture, sell or expose for sale in this state intoxicating liquor, as herein defined, in any quantity, without taking out a license." (Underscoring ours.)

Section 4900(g), Laws of Mo., 1945, provides, in part:

"(g) Any person who shall sell in this state any intoxicating liquor without first having procured a license from the supervisor of liquor control authorizing him to sell such intoxicating liquor shall be deemed guilty of a felony, \* \* \*"  
(Underscoring ours.)

Section 4901, Laws of Mo., 1945, provides, in part:

"Intoxicating liquor shall be sold at retail in the original package upon a license granted by the supervisor of liquor control, \* \* \*" (Underscoring ours.)

We believe it to be obvious that the regulations or restraints found in the Liquor Control Act of Missouri proscribe and control the sale of intoxicants. Therefore, in order for the Liquor Control Act to apply to the method of operation outlined we must find that a sale has been made. The above quoted statutes use the terms "sell," "offer for sale," or "expose for sale." That, we believe, is the statutory standard contained in the Liquor Control Act which determines whether or not an activity is legal or illegal, that is, whether or not there has been a sale in violation of the Liquor Control Act, is the test.

Let us examine the elementary law to determine what a sale is, in law. In the case of State v. Crumes, 3 S.W. (2d) 229, 319 Mo. 24, the Supreme Court of Missouri declared the Laws of 1923, page 242, denouncing the selling of intoxicating liquors, covers transactions taking the form of legal sales. At l.c. 230, the court held:

"The general rule is that a sale of chattels, when not otherwise expressly provided or understood, is a sale for cash; that payment and delivery are concurrent. Until payment is made, the buyer has no right of possession, and the title does not pass until the chattel is delivered, (Citing cases.)"

Further definitions of a sale may be found in Words and Phrases, Vol. 38, SALE, "Intoxicating liquor," pages 107-108, as follows:

"The essentials of a 'sale' are: First, a mutual agreement; second, competent parties; third, a money consideration; fourth, a transfer of the absolute or general property in the subject of the sale from the seller to the buyer. In charging an illegal sale of intoxicating liquors, an allegation of the price or consideration is indispensable. City of Cannelton v. Collins, 88 N.E. 66, 67, 172 Ind. 193, 19 Ann. Cas. 692."

Again, in American Jurisprudence, Vol. 30, "Intoxicating Liquors," page 396, Section 268, it reads in part:

"\* \* \* As generally used in statutes or otherwise, with reference to the liquor traffic, the word 'sale' means the transfer of title to intoxicating liquor by valid agreement from one party to another for some consideration. \* \* \*"



What constitutes a sale of intoxicants may also be found in Corpus Juris, Vol. 33, Intoxicating Liquors, page 591, Section 210. The general and essential elements of a sale of personal property generally, are found in the following Missouri cases: "A sale is a contract for the transfer of property from one person to another for a valuable consideration; three things being essential thereto--the thing sold, the price and the consent of the parties, *Barrie v. United Rys. Co. of St. Louis*, 119 S.W. 1020, 138 Mo. App. 557; The elements of a 'sale' at common law are mutual agreement, competent parties, money consideration, and transfer of absolute or general property in the subject-matter, *Wheless v. Meyer & Schmid Grocery Co.*, 120 S.W. 708, 140 Mo. App. 572; A 'sale' is a contract by which property is transferred from the seller to the buyer for a fixed price in money paid or agreed to be paid by the buyer. *Randolph v. Martin*, 86 S.W. (2d) 189; also, *Link v. Kallaos*, 56 F. Supp. 304." So it is seen that, in order for a sale to take place, certain essential requirements of law must be met both as to the sale of intoxicants as a special subject matter of a sale, as well as the sale of chattels generally. By listing the elements of a sale, we can define what is meant by the Liquor Control Act of Missouri where the terms "sell," "sale," "offer for sale" or "expose for sale" are used. From the above quoted authorities, we find the following essential elements necessary in order to classify a transaction as a sale: (1) a mutual agreement; (2) competent parties; (3) money consideration; (4) a transfer of property (possession); (5) a transfer of title.

It might be well to point out that the terms we seek to define are nowhere defined in the Liquor Control Act of Missouri.

Let us place the modus operandi of the corporations or individual owners operating retail stores or outlets, licensed to sell intoxicants at retail, in juxtaposition with the elements of a sale, and determine whether or not the method of operation constitutes a sale.

The first element of a sale is that there must be a mutual agreement. The first element, as stated, means that one person must agree to sell and another person must agree to buy. Some sort of agreement, legally recognizable, between the parties to the sale must be reached. As pointed out above, a corporation which owns several retail outlets or stores obtains a license for each retail outlet, designating such premise as a place licensed for the sale of intoxicants. In view of the fact that the corporation is actually the licensee of each separate place

of business, we are unable to perceive with whom the corporation would mutually agree or contract for the sale of intoxicants. The intoxicants purchased by the corporation's retail licenses has been stored in a warehouse for future distribution. The corporation owns the intoxicants in the warehouse, the corporation owns the various stores or outlets. Can the corporation agree or contract with itself to sell itself property which it already owns? We believe it to be an absurdity to argue or determine that the corporation, as the licensee of each place of business, must enter into a mutual agreement with itself in order to transact a sale of intoxicants, all owned by the same corporation.

Secondly, it is necessary that there be competent parties to a sale. Could Mr. "X," as the sole owner of several retail outlets, licensed to sell intoxicants at retail, deal with himself to sell himself, as a separate entity, property which he already owns? Is the same act necessary to a corporate enterprise? Where is the other competent person in the transaction? Either, where an individual owns several retail outlets, or where a corporation, as the licensee, owns and operates several retail outlets for the sale of intoxicants, there simply is but one legal party to the transaction, whether it be a corporation or individual owner.

Thirdly, there must be a money consideration in order for there to be a sale. The corporation, as licensee for five retail outlets for the sale of intoxicants, purchases intoxicants on its licenses. These intoxicants are then stored in a central warehouse. There can be no question but that the corporation at the end of this transaction owns title to the intoxicants and has at least constructive possession. Now, the corporation, which also owns other stores, distributes from a central warehouse the intoxicants bought on its licenses to the other stores also owned by the corporation. Where is the consideration the stores would pay the corporation? Must the corporation pay itself a consideration for intoxicants legally purchased on its licenses and subsequently transferred to other stores all owned by the said corporation? We think not.

Fourth, there must be a transfer of property from the seller to the buyer, either actual or constructive possession must occur, in order to constitute a sale. Does the corporation transfer property, which it admittedly already owns, by merely distributing

the property to stores it also owns? The corporation owns the chattels in store #1 as much as it owns the chattels in store #3, be they intoxicants or other items. Is the corporation's ownership changed by moving the chattel from store #1 to store #3? If the corporation again moved the chattel from store #3 back to store #1, would its title be restored? We do not believe that there was ever any transfer of title simply because the chattel was moved. The mere movement of chattels from store to store does not fulfill the requirement of a sale that the property should be transferred.

Lastly, there must be a transfer of title to the property in order for there to be a sale. The corporation, as licensee for five retail outlets for the sale of intoxicants, purchases by its licenses intoxicants. Need we argue where title is, obviously in the corporation. It is our view that the corporation has title, dominion and possession of the intoxicants, whether the physical presence of the intoxicants be in any of the stores it owns. It is impossible for the corporation to transfer to itself title which it already possesses. At the time of the sale of the intoxicant to the consumer, who transfers the title? The clerk in the store? The managing officer, or the corporation? From where does the title to the intoxicant emanate? Obviously, the consumer receives his title to the intoxicant from the corporation who owns all the intoxicants in all the stores and, in addition, owns the stores or outlets themselves.

We, therefore, believe that the modus operandi, as engaged in by a corporation or individual owner, owning several outlets or stores for the retail sale of intoxicants, does not constitute a sale within the meaning of the Liquor Control Act of Missouri. At most, it amounts to merely a method of operation peculiar to a corporate organization or by an individual owner of several outlets, and is quite in keeping with the system of free enterprise.

In short, the licenses of the corporation or individual owner used to purchase large quantities of intoxicants, which, after storage in a central warehouse or on a licensed premise, are distributed to other retail outlets by the corporation's order, that act is not being done in the "nature of a wholesaler" for the reason that none of the essential elements of a sale within the meaning of the Liquor Control Act are present in the transfer or transaction outlined in your opinion request. Lacking the elements of a sale, the modus operandi is a method of operation and is not carried on in contravention of law by the corporate licensee which placed the purchase order for the intoxicants.



In 1947, the Supreme Court, Appellate Division, of New York, in the case of Application of Restaurants & Patisseries Longchamps, Inc., et al., 67 N.Y. Sup. (2d) 362, considered a question of fact which appears to be in point. In that case, Longchamps, Inc., a corporation, operated five restaurants. There were also four other corporations, each operating a single restaurant. Purchasing for all nine restaurants, all licensed to sell intoxicants at retail, was done by a common commissary conducted by the Longchamps corporation. Deliveries were made to the separate restaurants from the common warehouse. The charge in that case was made against Longchamps, a corporation owning five retail outlets licensed to sell intoxicants, that by so operating Longchamps was selling liquor at wholesale, and the four other corporations were purchasing from Longchamps at wholesale. The Liquor Authority of New York found Longchamps, Inc., guilty and revoked the licenses of the nine restaurants. However, this determination was annulled by the New York court. The court, in their opinion, at l.c. 364, made the following statement:

"R & P L is not conducting a wholesale business. The alleged wholesaling was only a method of operating a commissary for a chain of restaurants of identical interest and in substance and effect R & P L was purchasing agent for all the restaurants rather than a seller in any ordinary sense."

This case, we believe, is authority approving the business conduct referred to in your request above, and supports the reasoning outlined above.

In answer to your first question, we believe that it is lawful for a corporation or individual, as licensee, owning several retail outlets for the sale of intoxicants, to purchase intoxicants on the licenses so held and store same in a central warehouse or on a licensed premise and then distribute the intoxicants as needed to the various licensed retail outlets belonging to the corporation or individual owner.

Section 4947, R.S. Mo. 1939, and Regulation 12(d), page 119, Rules and Regulations of the Supervisor of Liquor Control, 1946, must be complied with if a central warehouse is used for storage.

## II.

Your second question presents the legality of the transfer of intoxicants transferred by one of several corporately owned retail outlets licensed to sell intoxicants directly to another of said retail outlets rather than from a central warehouse. In other words, a corporation owns five retail outlets, all properly licensed for sale of intoxicants at retail. Store #1 transfers legally purchased intoxicants to store #2, both stores belonging to the same corporation or individual owner. Is this transfer in violation of the Liquor Control Act of Missouri? The prior opinion of this office, rendered November 19, 1938, *supra*, held that such transfer of intoxicants was in violation of Section 4913, *supra*. Under the reasoning and authority presented in question I, *supra*, we believe that such a transfer does not amount to a sale within the meaning of the Liquor Control Act. At best, the action is a mere transfer of the physical property already owned, possessed and belonging to the same corporation or individual owner, as licensee of several retail outlets, from one location to another location. There being no sale made by the store or retail outlet transferring the intoxicants to the receiving store or retail outlet, Section 4913, *supra*, has not been violated. Such a method of operation does not violate any other provision of the Liquor Control Act.

CONCLUSION

(1) A corporation or individual owner, as licensee of several retail stores or outlets licensed to sell intoxicants at retail, may purchase intoxicants, place the intoxicants in a central warehouse or on a licensed premise, and then distribute the intoxicants as needed to the various licensed stores or retail outlets belonging to this same corporation or individual owner. This method of operation fails to meet the essential elements of a sale, and, at most, the purchasing store or retail outlet is acting as a purchasing agent or commissary agent and not as a wholesaler.

(2) The transfer of intoxicants from store to store, and between stores or outlets, all belonging to the same corporation or individual owner, as licensee, is not done in violation of the Liquor Control Act of Missouri, particularly Section 4913, *supra*. The transferring store's action does not constitute a

Mr. Edmund Burke

-11-

sale, and the receiving store is merely accepting physical possession of property already owned by the corporation or individual owner of the stores or outlets so operating.

(3) Opinion No. 10, rendered November 19, 1938, to Honorable W. I. Bowers, is no longer to be considered as the opinion of the office of the Attorney General of Missouri.

Respectfully submitted,

WILLIAM C. BLAIR  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

WCB:LR